

# **REQUEST FOR PROPOSAL ACQ-2005-0923-RFP**

## **for the Statewide Rail Capacity and System Needs Study**

**Washington Transportation Commission**

RFP Issue Date: October 28, 2005  
Proposal Due Date: November 21, 2005

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## **SECTION I - INTRODUCTION**

### **I-1 PURPOSE**

This Request for Proposal (RFP) is seeking consultant services to conduct a Statewide Rail Capacity and System Needs Study. The study area will cover the entire state but incorporate the relationship of the state to the regional and national transportation system.

The Washington State Transportation Commission is an independent state agency of seven citizen members who are appointed by the Governor and who also help formulate and shape transportation policy for the state and region. This statewide rail capacity and system needs study is being implemented by the Transportation Commission at the request of the State Legislature which allocated funds in the 2005-2007 Transportation Budget to address this information gap and policy need (ESSB 6091, Section 206, (3)).

The Transportation Commission will maintain overall responsibility of the study and approval of study findings, final recommendations, reports and presentations to the State Legislature. A Project Manager will be hired specifically to oversee and manage the day to day oversight of this study. The Transportation Commission Administrator will work closely with the successful contractor and the project manager throughout the study period. The work for this study will be completed between December 2005 and December 2006, with sequential updates to the Transportation Commission throughout the study period. A final report and recommendations to the Transportation Commission is expected to be delivered in November 2006.

The Transportation Commission is requesting proposals from qualified firms to perform this work, within the time frame mentioned above, not to exceed \$950,000. The contract will be fixed price, and the amount of the contract will cover all expenses of the contractor. Payment will be based on the successful completion of each task, sub-task, work product and project deliverables specified in this RFP.

## **I-2 BACKGROUND**

The Transportation Commission's role in setting transportation policy was modified in a way that largely increased its role as a policy setting and advisory body to the Governor and the Legislature, noting five significant policy mandates:

- Conduct a comprehensive tolling study
- Conduct a rail capacity and needs study
- Provide oversight and make key decisions related to the implementation of the newly created Transportation Innovative Partnerships (TIP) program within the Washington State Department of Transportation (WSDOT).
- Prepare a biennial statewide multimodal transportation progress report to be submitted to the Governor.
- Offer ongoing policy guidance and recommendations to the Governor and the Legislature in key issue areas such as transportation finance, infrastructure needs, improving planning and coordination among transportation agencies and providers, etc.

The WSDOT and the Transportation Commission will retain a strong working relationship.

- WSDOT staff support for the Commission will continue.
- The Secretary continues to serve as an ex officio member of the Commission.

The Commission's role in providing citizen oversight of WSDOT to ensure accountability continues and is effectively enhanced via the addition of the Transportation Performance Audit Board (TPAB) to the Commission's agency family and with the appointment of a Commissioner to the TPAB.

The 2005-2007 Transportation Budget proviso concerning a statewide rail capacity and needs analysis is the basic charge to this scoping proposal and reads as follows:

***“...The Purpose of this study is to***  
***(a) assess the rail freight and rail passenger infrastructure needs in this state;***  
***(b) review the current powers, authorities, and interests the state has in both passenger and freight rail;***  
***(c) recommend public policies for state participation and ownership in rail infrastructure and service delivery, including but not limited to planning and governance issues; and***  
***(d) develop a rail asset management plan.***  
***The commission shall report their findings and conclusions of this study to the transportation committees of the legislature by December 1, 2006”***

A consultant will be selected to perform this study for the Commission, based on a solicitation process conducted by the Commission. Firms may collaborate to provide joint proposals. In such circumstances, the consulting team must identify a prime contractor, with other participating firms acting as subcontractors.

## SECTION II - SCOPE OF WORK

### II-1 STUDY COMPONENTS

A brief description of the tasks to be completed is provided below. **The tasks described here are not meant to be exact descriptions of consultant's work product.**

Responding firms are expected to provide their best efforts to propose a program that meets the study's goals and addresses the unique aspects of Washington State's transportation system. Each of the following study components corresponds to tasks in the detailed scope of work (see Exhibit A).

#### **Work Task 1: Review the role of rail in State and national economy:**

This task will involve a review of literature at the national/international level and an in-depth examination of the status and role of rail in the Washington economy. The review will include and consider studies and efforts currently underway at both the State and national level, with special attention given to the efforts undertaken as part of SAFETEA-LU. Also included in the review will be the near and long term plans of the Class 1 railroads in the State. Regional studies and plans such as the Prosperity Partnership and studies on the competitive position of Washington ports relative to California and British Columbia will be included.

Under this task the roles of rail will be examined for passenger, and for freight on both main line and short line railroads. Consideration of the role should include existing state laws and policies, and the implications and benefits for the local, regional, State and national economies of maintaining a healthy rail system. The consultant will examine and identify the complementary and competitive roles, and benefits achieved, of the railroad mode in a multi-modal and inter-modal transportation system, including the base information developed in the AASHTO Freight Rail and Passenger Rail Bottom Line Reports. The consultant will address future trends that may have significant impacts on the State of Washington's freight-rail-dependent shippers, including:

- Continued rationalization of the national and state rail networks.
- The shift of mainline rail companies towards inter-modal services.
- The shift in emphasis of mainline companies towards core service offerings (providing track and power units) and the trend towards shifting equipment capital costs and risks to shippers.

As a specific subpart of this work task the consultant will identify the impacts on communities of the operations of these rail lines and systems and the distribution of benefits and costs along those lines/corridors as the system is maintained or improved.

The national assessment will include a review and analysis of other states' governance and organizational structures, with the consultant then providing recommendations for the State of Washington's organizational and governance structure for guiding its participation in the public/private rail sector.

**Work Task 2: Determine the current status, future plans, capacity constraints and needs of passenger and freight rail service in the State, including the interaction between freight and passenger service:**

This work task will assess the rail freight and rail passenger infrastructure needs in the State by providing information to be used as a basis for 10-20 year staged strategic planning and for the State's involvement in the statewide rail system. The consultant will examine existing projections for east-west and north-south growth in light of recent increased traffic experiences (e.g. container growth of 20% from 2003 to 2004 and over 25% so far this year), identified existing capacity constraints in the east-west movements, domestic competitive issues for traffic, intra-city congestion, international trade expectations, and energy concerns. Related issues to be examined under this work task dealing with the total freight rail system are the questions of multiple yard and switching capacity needs, truck connections between rail and port facilities, cross border issues, energy/emissions environmental concerns associated with delays and overall alternative modal use, and impacts on highways, both feeder highways and the Interstate System. Safety in the operating environment such as locations and structures at road crossings, emergency vehicle response times, and trespass issues should be reviewed.

Under this work task the consultant will identify any institutional, operational and infrastructure impediments to the efficient movement of freight on Washington's railroad system. Included will be an evaluation of opportunities for greater cooperation among the railroads, both short line and the Class 1s. The analysis will result in preliminary cost estimates with a fatal flaw analysis for each of the institutional, operational and infrastructure impediments identified above. Particular attention will be paid to the passenger/freight movement interactions (and how the railroads operate the lines in these corridors), incorporating the capital investment programs and identified capacity needs of passenger movements, e.g. Sound Transit, and how to maximize system efficiency and capacity on the I-5 and east-west corridors as well as the freight needs of ingress and egress to Washington ports under the current and future increasing traffic scenarios. The east-west capacity needs will receive particular attention in this analysis, including the impact of solutions of north-south movements as related to east-west traffic.

Past studies and plans developed by the Washington State Department of Transportation, the Washington Public Ports Association, and other relevant rail studies, in conjunction with the Class 1 railroads, cities, and regional planning authorities will serve as the starting point and the basis for the analysis. The consultant will examine the current long run infrastructure investment plan and technical supporting documentation associated with the Amtrak Cascades, BNSF and Washington State/WSDOT (Master Corridor Agreement) efforts, and the capacity over the mountains for east-west movements, as examples, and update if needed. The underlying questions to be resolved are: the validity and sources of underlying planning assumptions (e.g., rate of forecasted growth in freight transportation and factors that could change those projections, such as lack of funding for roadway grade separations), what has changed and what is needed and feasible, if anything, as a result of those changes to set investment priorities with limited available resources.

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The review will include and consider, but not duplicate, recent and past studies on capacity levels in the local and surrounding regions as well as current plans of investment by the ports, Class 1 railroads and State/national efforts. The study will reach out into Oregon and Idaho in a systems approach, considering, for example, the Vancouver Columbia River bridge issue, and density around Sandpoint, Idaho as capacity constraints. As information is developed in the other work tasks of this study these capacity needs and information on bottlenecks and chokepoints will be updated. Included in projecting future bottlenecks are new but uncertain increases in military movements in the region. The final product will be a series of reasonable operational and capital investment scenarios and cost estimate ranges, with consideration of the operational and investment plans of the Class 1 and short line railroads, for program and policy development for any State/public involvement in the rail system.

A similar examination and specification of the future capacity needs, impediments, probability of financial viability without state support, the ability of recovering rail lines turned over to alternative uses, such as trails, and alternative investment strategies for the short-line railroads of the State will be a subtask under this work task. The performance as to on-time movement and turn-around at the port terminals affecting this rail segment is a charge to the consultant. This information will be utilized in later work tasks examining the role of the State in realizing the public benefits associated with efficient and sustainable short-line railroad operation in the State.

### **Work Task 3: The major freight-rail-dependent supply chains of the State will be analyzed as to production, structure, volume and corridor/direction of traffic, current and future levels of transportation capacity needs, and current impediments impacting the major supply chains.**

The industry specific supply chain analysis, e.g. forest and paper products, grain, manufacturing, container, international trade, etc. will focus on those shipments originating in or destined for Washington State but will include regional system wide constraints or developments, reaching out to major connectors such as Chicago. Import and export freight supply chains will be examined under this work task, including both shippers and passenger movements in the State, as to capacity needs and configuration, geographically, by sector and specific industry, and including appropriate consideration of a possible surge military deployment in future decades by rail through Fort Lewis (the only Power Projection Platform in the western United States.)

The study will result in a needs assessment by supply chain, one that incorporates the type of freight rail service the rails will be considering as core business and what investment by the railroads is envisioned for the industries, e.g. paper industry, grain products movements, etc.

Appropriate logistics managers within the supply chains, such as managers in Wal-Mart, Costco, etc., will be interviewed as to needs and forthcoming changes in those needs.

### **Work Task 4: Communications and public involvement in rail plan implementation.**

This work task deals with the creation of an action plan, to be implemented during the actual study and after the results are available, to involve stakeholders at the highest

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policy and implementation levels. During the study the consultant will coordinate with the Transportation Commission to present the results of the study as it progresses. Working with the Commission, the consultant will contact high level policy participants and key stakeholders and present initial findings, listen to responses and concerns and then utilize these to further shape the on going study process.

After the study is completed and scenarios/plans are in place, the consultant will have developed a plan for continued high level public/stakeholder involvement as the State moves through its part of the implementation phase. Stakeholders contacted will be from a broad spectrum, including but not limited to, communities along potential line changes to ports to corporate railroad officials to rail-dependent supply chain industries to specific mainline and short-line shippers and operating railroad management. The consultant will assist the Commission in identifying the stakeholder groups appropriate to differing sections of the study and then contacting and engaging these individual groups as the study progresses.

### **Work Task 5: Investigate and determine the current and expected operating practices of participants in the rail industry.**

Both the Class 1 railroads (BNSF and UP) operate in a profit maximizing business model. Short line railroads commonly operate in one or both of a service or profit maximizing model. This work task will examine the investment philosophy of the railroads as to capital, rolling stock and labor availability, their business models and system management policies and draw implications for State investments and overall planning. The ability to build capacity by increasing equipment utilization, both rolling stock and fixed assets, has been shown by members in the rail industry. Scheduling operations, car design, overall speed of operating trains, directional routing of trains are areas of potential equipment utilization improvements that the consultant will investigate. In the earlier Work Task 2 and subsequent work tasks the consultant will take the “on-the-ground” operating and investment practices, and potential improvements, into account as a menu of realistic policy options is developed, with sensitivity towards maintaining the current competitive relationship between the Class 1s.

The operating and investment plans of the ports and regional authorities in the region will also be reviewed and implications for system-wide improvements presented, both operationally and in policy options as the State role in the rail transportation system is developed in a later work task.

### **Work Task 6: Examination and positioning of the Washington State rail program in national studies and funding possibilities.**

This work task will review and present the funding and other alternatives available to the State and ascertain how the State or region could be more successfully involved in these funding alternatives. This task will include detailing the new studies and programs under SAFETEA-LU (*see footnote “a” below*), as well as others such as the Freight-Rail Bottom Line Report: Transportation Invest-In America, and examining the potential for participation by Washington State in those studies and project/programs. It should also include a survey of information developed at the National level by the Surface Transportation Board and the Federal Railroad

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Administration as well as national examples such as the Alameda Corridor and the Chicago Creates program. The new national programs dealing with disaster and security issues should be used to position Washington rail lines in reacting to such events. The findings of these studies, and activities in the investment programs such as the National Corridor Infrastructure Improvement Program, as they are completed during the timeframe of this Statewide Rail Capacity and System Needs Study, will be included by the consultant in final reports and recommended plans of action.

The current powers and authorities held by the State in funding and participating in private/public investment projects that will enhance mainline and short-line rail capacity and operational performance will be reviewed and presented.

The consultant will then examine, analyze and present different localized or regional funding (and associated or other policy) alternatives, including but not constrained to user fees, port and container fees, rail or third party/shipper investment tax credits, etc. Possible initial alternatives will be presented to the Transportation Commission and feasible options selected for further study.

### **Work Task 7: Develop the conceptual approach underlying the rationale of State participation in private rail investments.**

The focus of this study is a clear discussion of what the State's role in freight and passenger rail transportation should be and what the appropriate investment criteria should be in implementing that role. The rationale for public participation arises from the public benefits that are achieved as a result of that participation. These determine the defensible public sector capital investments in (public/private) freight and passenger rail solutions for both private and public rail operations. The consultant will examine the issue of private/public participation, detailing the benefits and costs and gainers and losers from conceptual investments. National, Canadian and European studies in the literature will be examined. Existing State law, previous Commission policy as directed in earlier versions of the Washington Transportation Plan (WTP) and legislatively mandated policy and advisory committees work should be examined in detail. The consultant will include in the examination, an evaluation of the challenges presented by railroads owned by various public entities including, for example, the City of Tacoma

a: SAFTETEA-LU sections include the following:

National Corridor Infrastructure Improvement Program (Section 1302)

Study of Rail Transportation and Regulation (Section 9007)

State Infrastructure Bank (1602)

National Inter-modal System Improvement Plan (4149)

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short lines and the Puget Sound Naval Shipyard short-line. The final work product for this work task will be a methodology or step by step procedure for the State to use in evaluating alternative policies, investments or projects, in a constrained budget scenario. (One approach could be benefit-cost ratios developed by the railroads that incorporate a distinct calculation of separable public benefits compared to possible public costs, i.e., investments.)

**Work Task 8: Develop a menu of practical policy options, analyzing the full (private and public) costs and benefits of the alternatives.**

Specific policy options will be inventoried as to impact on freight rail and passenger rail capacity. The analysis will be presented for a comprehensive list of specific choke-point segments, such as, for example, actual interaction of passenger and freight rail for the I-5 and east-west corridors or ingress/egress into the Ports of Tacoma and Seattle. Detailed analysis of the benefits and costs, both public and private of alternative investments and the policy options (including “co-production”) guiding these investments will be developed by the consultant.

The policy analysis will be conducted by also examining the competitive and complementary functions provided by different modes in Washington State’s transportation system, including those short-haul rail movements that support inter-modal centers and inland terminals designed to relieve increasing port congestion. The range of options will be developed by different corridors, supply-chain elements and local industries, after the impediments to increasing the rail system’s capacity to service the growing domestic and international traffic volumes being experienced and projected are identified. The analysis will provide several case studies delineating the full cost of rail improvements (including the benefits of reduced liability for the railroads as a result of investments), including the cost of mitigation of increased volumes throughout the rail system.

At the aggregate policy level, the consultant should indicate an approach to, and the role of, the State in facilitating and helping guide a state, regional or national discussion on federal funding and approaches to public/private partnerships for freight rail infrastructure improvements.

**Work Task 9: Develop rail asset management plan for State owned assets.**

Under this work task the consultant will identify national best practices for rail strategic planning and asset management. Using the current best practices surveys of SCORT as the basis, a survey of other States’ experiences as to achievement of maximum public benefits and associated recommendations will be one vehicle by which the consultant accomplishes this work task. Other sources, including the American Short Line Regional Railroad Association, should also be queried. The focus under this task will be the short-line railroad system in the State, including those owned by public as well as private entities, but will also include other rail investments such as rail equipment or terminals owned or potentially owned by the public sector, such as trackage in ports.

In this work task the consultant will propose a vision, mission and goals for the State’s short-line rail program operated by the Washington State Department of Transportation

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and will detail those items during the public interaction and participation with the stakeholders throughout the study. As part of the overall study, analytical methods of measurement of rail capacity and performance quality will be developed and an appropriate methodology recommended. The methodology will include critical planning issues such as the method(s) to evaluate the financial sustainability of short line railroads receiving state support, appropriate performance measures, the means to continually monitor port and other regional authority's freight forecasts and experiences, support for Amtrak, regional assumptions about growth, new policy developments and other macro, but critical to on-the-ground planning and implementation, issues.

### **Work Task 10: Summary recommendations and plans for implementation.**

This work task will produce several summary plans and methodologies based on the overall work assignments detailed thus far. The recommended items are to be practical (providing the means and approaches to utilization), and they are to take a state wide systems approach.

First, an analytical plan for determining when State interest and public sector involvement in what is essentially a private rail system, is defensible and appropriate, is to be produced by the consultant.

Second, an investment plan, section by section of identified chokepoints( intra-city and trunk lines) and productive improvements, is to be developed under this work task. The plan will identify benefits and costs, including anticipated mitigation costs, of improvements under consideration, with the distribution of those benefits and costs between private and public entities being part of the evaluation and findings (The Master Corridor agreement for passenger rail investment between BNSF and WSDOT is an example). This plan will cover passenger and freight functions by the mainline railroads, and interactions/trade-offs, as well as full consideration of the short-line rail sector and interactions/trade offs between short-line and Class 1 railroads. The final work product will be a series of scenarios of policy and investment options with attendant benefits and costs (it is not expected that detailed engineering estimates will be developed; rather the emphasis will be on the aggregate benefits/costs relationship).

Third, a recommended methodology for determining and achieving maximum rail capacity from the private sector should be developed as a component of this work task. Such a methodology will include consideration of train operations by the railroads, opportunities for improved cooperation/competition among the railroads, rolling stock utilization, improved grade-crossing controls, maintenance programs, transit times, directional routing, etc. A suggested approach to public sector and railroad firms continuing dialogue and interaction is required as part of this methodology. It is in this role, to be developed and structured by the consultant (including identifying criteria for investment as well as an organizational structure for guiding that investment and operations), that the State may act as the convener for regional discussion focusing coordinated attention on the emerging central issues facing the State's rail system over time.

Another underlying theme to be considered, and included in the methodology, is the question dealing with the possibility of trading public investments for operational and or co-operational improvements by the railroads. Some operational changes may not be in the business plan of the railroads but public investment may help bring forth some of those changes that aid the industries of Washington, the region and the country, and ultimately the taxpayer.

## **II-2 DELIVERABLES TO BE PROVIDED**

The successful contractor will be required to provide three separate interim reports to the Commission, in addition to the various Technical Memoranda identified as work products in the Appendix. The intent is that each of these deliverables will build on each other, in substance and relationship, beginning with an early initial review of the first four work tasks and concluding with a final report that will be useful for policy deliberations, planning development and project evaluations. Each of the deliverables will review the finding of the work tasks, and the Technical Memoranda that have been provided to the Commission, tying the findings back to the appropriate budget proviso subsection.

### **Interim Report # 1 (Due April 31, 2006)**

The first deliverable to the Commission is a summary of the results of work tasks accomplished through this time, with an initial draft to be provided by March 3, 2006 for review and comment. The findings provided to the Commission via the Technical Memoranda need only be summarized in this report and will be reported by work tasks as related to the appropriate budget provisos. The initial plan and activities in the high level public/ stakeholder involvement program, and resultant experiences will be detailed. This material and report may be used as a basis of planning a workshop with the Commission on or about the due date of the Interim report, as decided by the Commission. The report thus should contain sufficient detail and analysis to support the workshop with the Commission and provide a focused statement and plan for the continuing work tasks, including how the first material and Commission discussion may shape the subsequent work tasks.

### **Interim Report #2 (Due August 25, 2006).**

The second deliverable is an interim report that focuses on work tasks undertaken and completed since the first interim report and is due August 25, 2006. A draft of this report is due to the Commission on August 4, 2006 for review and comment. This report will only summarize, not duplicate, previous Technical Memoranda, while building off of the first interim report. It should deal with opportunities to induce “competition” among short-line and Class 1 railroads, scenarios for state involvement in appropriate projects and rail management plan for the state. It should have sufficient detail to support initial policy deliberations by the full Commission as well as continuing project direction. Additionally, any workshops with the Legislature, Governor and other stakeholders, as part of the high level public/ stakeholder participation program, will be based on the finding of this interim report.

### **Final Report (Due November 17, 2006).**

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The third deliverable, the Final Report, will continue on from the initial two interim reports, but will emphasize recommendations and plans for implementation. Plans, based on a state wide approach, will include an analytical plan for determining when State interest and public sector involvement in what is essentially a private rail system is defensible and appropriate. Other plans to be highlighted in the final report include an investment plan, specifically applied to relevant chokepoints, with benefits and costs (and the distribution of those benefits and costs) between private and public entities to be identified, and a plan for continued public participation as the other plans are moved forward.

A draft of the final report must be provided by October 27, 2006 to allow the Commission and stakeholders an opportunity to review and comment on the report before it is finalized. In addition to the actual report, each of these three deliverables shall also include an executive summary, presentation and folio.

### **II-3 REPORTING AND DELIVERY REQUIREMENTS**

#### Work Plan

All work shall be in accordance with an approved work plan:

1. Within ten (10) calendar days after the contract start date, the consultant shall develop a final work plan to meet the work requirements in the above sections of this RFP, and any changes necessary or negotiated with the Commission, based on any additional information or input provided by these individuals. The work plan shall include:
  - The specific tasks and sub-tasks to be performed;
  - A schedule for performing the work tasks, indicating which work tasks will be addressed in each of the three required report deliverables under Section II-2 ;
  - The expected duration and level of effort in hours by person;
  - The specific data that will be needed, along with data sources;
  - The milestone dates;
  - The management, supervisors, staff and affiliates assigned to the tasks and subtasks, and the amount of time each person will spend on each task and subtask.
2. The final work plan is subject to approval by the Commission. Any subsequent changes shall also require approval by those individuals.

#### Progress Reporting

The consultant will be expected to facilitate bi-weekly teleconference coordination meetings with the Commission. In addition the consultant will be required to facilitate workshop and policy discussions with the Commission as needed, and may be required to participate in oral presentations in public meetings to state boards, legislative committees and their staff during the course of the study, including at least three presentations of the final results of the study. As appropriate, the consultant may need to provide follow-up on questions or comments raised at these meetings. The consultant will be required to

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follow general guidance provided by the Project Manager as to the format and length of technical memoranda, briefings and reports, as well as the level of detail appropriate for intended audiences.

The consultant shall provide to the Commission bi-weekly reports and be available to participate in bi-weekly conference calls to discuss the results and progress of the study.

The bi-weekly report shall, at a minimum, include the following items.

- A summary of any preliminary findings or issues of significance.
- Risks or issues that might affect the schedule or level of effort as planned, and their required resolution time frames.
- Progress against planned tasks and activities for the particular reporting period.
- The specific accomplishments achieved during the reporting period, including listing of names contacted or interviewed and documents reviewed.
- Planned tasks and activities for the next reporting period, including anticipated contacts and research plans.
- Disposition of previously reported risks or issues.
- Proposed revisions to the work plan, specifically noting any suggested changes in schedule or assumptions. (Note: as indicated in Section II-3, actual revisions to the work plan must be approved by the Commission.
- Interim reports and data providing the results of the reviews and analyses, as the analyses are completed.
- Technical Memorandum for each applicable work task for each appropriate deliverable is to be delivered to the subcommittee of the Commission and the Program Manager.
- The progress reports, which shall be filed electronically 24 hours prior to the scheduled conference call, shall be organized into narrative language that is clear, concise and structured to be easily understood by a third party.

## SECTION III – MANDATORY MINIMUM QUALIFICATIONS

### III-1 MANDATORY FIRM QUALIFICATIONS

The minimum qualifications listed here are to ensure Firms have adequate experience and appropriate expertise to serve as the primary consultant on the Statewide Rail Capacity and System Needs Study. **Other Mandatory Requirements are listed in other sections of this RFP.**

The Firm must submit qualification information to show conformance to the following mandatory requirements. Failure to submit these items will result in Firm's proposal being rejected.

- The Firm must be licensed to do business in the State of Washington.
- Each Firm must provide a minimum of three (3) customer references where they have delivered services and work products that demonstrate the capability to perform the task requested in this solicitation. Preferably, references should correspond to the projects described in Section VI-7 (Firm's Recent and Relevant Experience.) These references must include the company's name; contact person's name and title, address, phone number; description of work provided for the customer; and the dollar value and duration of contract.
- Firms shall have recent experience (within the past five years) that demonstrates substantial experience in and knowledge of: national initiatives (such as SAFETEA-LU); working with, and helping States work with local, regional and national initiatives, especially in rail efforts; traffic and capacity projections, and assumptions underlying those projections, for both passenger and freight rail; public/private partnerships in investment and operation projects; making determinations of the public benefit of projects and programs; the operating and investment history and plans of Class 1s and public and private short-line railroads, as well as plans of regional institutions such as ports, planning agencies, WSDOT, and others; the role of rail in a changing multi-modal transportation system in Washington and the United States; freight-rail-dependent supply chain industries in Washington and the region; public involvement and information process
- Evaluation of this qualification will be based on information required by Section VI-7 (Firm's Recent and Relevant Experience.)
- The Firm must disclose all current contracts with:
  - The Washington State Department of Transportation,
  - The Washington State Transportation Commission,
  - Other governmental or private organizations implementing or promoting specific rail technologies or approaches.

The Firm must provide an assurance that these arrangements do not impair the firm's or employees' personal, external or organizational independence. The Project Manager reserves the right to request additional information from the Firm to

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ascertain whether contractual or other relationships impose actual impairments to independence. Failure to provide additional clarifying information may be grounds for disqualification from this procurement.

- Firms who do not meet these minimum qualifications shall be deemed non-responsive and will not receive further consideration.

## SECTION IV - GENERAL INFORMATION

### IV-1 DEFINITIONS

**“Firm”** means an entity intending to submit or submitting a proposal for the project assembled specifically for this purpose.

**“Apparently Successful Firm(s)”** means the Firm(s) or firm(s) selected by the Department as the most qualified entity to perform the stated services.

**“Project Manager”** means the Commission project manager for the Statewide Rail Capacity and System Needs Study.

**“Commission”** means the Washington State Transportation Commission.

**“RFP”** means this Request for Proposal, any *addendum* or *erratum* thereto, Firms' written questions and the respective answers, and any related correspondence that is: (1) addressed to all Firms, and (2) signed by the Project Manager or his/her designee.

**“WSDOT” and/or “Department”** means the Washington State Department of Transportation.

### IV-2 COMPENSATION AND PAYMENT

The compensation for the duration of this contract shall be fixed from the fee included in the Firm's proposal. Fixed Bids must include all costs including, but not limited to: labor, travel, lodging, per diem, administrative and any and all incidentals necessary to complete the performance of the proposed contract.

Progress billing may be submitted following completion of the following deliverables:

<b>Deliverable</b>	<b>Percentage of Contract Amount Payable</b>
Interim Report #1 (Due April 31, 2006)	20%
Interim Report #2 (Due August 25, 2006)	36%
Final Report (Due November 17, 2006)	29%
Contractor Progress Reports (January to November.) Billing to be submitted with the first bi-weekly report of each month.	1% per monthly billing
Public presentations of final study results to the Commission and other public bodies, as determined by Commission (To be completed no later than April 2007)	5%

**The firm(s) selected will be expected to produce professional quality written reports that meet the Department standards for quality and that clearly document the basis for findings, conclusions, and recommendations.**

### IV-3 EXPECTED TIME PERIOD FOR CONTRACT

The period of contract performance is expected to be from December 2005 through April, 2007. The majority of the work is expected to be complete by November 2006.

## SECTION V - INSTRUCTIONS FOR COMPLETING AND SUBMITTING PROPOSALS

### V-1 RFP COORDINATOR

The issuance of this RFP has been approved by the Washington State Transportation Commission.

The RFP Coordinator is the **sole point of contact** for the Commission related to this procurement. All communication between the competing Firms and the Commission upon receipt of this RFP shall be with the RFP Coordinator, as follows:

Tami Grant, RFP Coordinator  
Washington State Department of Transportation  
**Hand Deliveries to: 310 Maple Park Avenue SE, First Floor Reception Desk**  
P.O. Box 47408  
Olympia, WA. 98504-7408  
Phone: 360-705-7549  
FAX: 360-705-6848  
Email: grantt@wsdot.wa.gov

**ANY OTHER COMMUNICATION WILL BE CONSIDERED UNOFFICIAL AND NON-BINDING ON THE COMMISSION. FIRMS ARE TO RELY ON WRITTEN STATEMENTS ISSUED BY THE RFP COORDINATOR. COMMUNICATION DIRECTED TO PARTIES OTHER THAN THE RFP COORDINATOR MAY RESULT IN DISQUALIFICATION OF THE FIRM.**

### V-2 SCHEDULE OF PROCUREMENT ACTIVITIES

All Firms must adhere to the following schedule of activities. Firms mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator listed in this RFP. Notwithstanding the provisions of RCW 1.12.070, late proposals will not be accepted, nor will time extensions be granted.

<u>Event</u>	<u>Date</u>
RFP Issued	October 28, 2005
Proposer's Conference (10:00 a.m. to 12:00 noon) and deadline for written RFP clarifications/questions	November 7, 2005
Mandatory Letters of Intent to Propose due	November 8, 2005
Amendment – WSDOT's response to clarifications/questions	November 14, 2005
Proposal due date	November 21, 2005
Finalist oral interviews (if required)	December 6-7, 2005
Announcement of Apparently Successful Firm(s)	December 14, 2005
Contract start date	December 2005

**The Commission reserves the right to revise this schedule.**

**V-3 PROPOSER'S CONFERENCE AND FIRM'S QUESTIONS AND ANSWERS**

A Proposer's Conference will be held from 10:00 a.m. to 12:00 noon, November 7, 2005, at the **WSDOT Headquarters, Commission Board Room, Olympia, Washington**. The Commission will discuss general requirements of this RFP and schedule. Any written questions received during the Proposer's Conference will be processed according to the question and answer procedure described in the following paragraph. Oral questions and answers will not be recorded and no further response will be provided. Attendance at this conference is NOT mandatory.

Specific questions concerning this RFP should be submitted in writing to the RFP Coordinator at the address specified in Section V.1 of this RFP. Hand delivered, faxed and email submission of questions is acceptable. The RFP Coordinator must receive questions no later than 5:00 p.m. the date specified in Section V-2 Schedule of Procurement Activities.

**All written questions and answers will be compiled and presented in written form as an Amendment to the RFP.** Only Firms submitting a Letter of Intent to Propose will be notified via email of amendments and/or other communications regarding this RFP.

**V-4 FACSIMILE AND EMAIL COMMUNICATIONS**

You may use facsimile and/or email for any communication required in this RFP **EXCEPT for your formal response to the RFP (Firm proposal) and protest, if any.** You may **NOT** send your proposals or protest by facsimile or email communication.

**V-5 PROPOSAL FORMAT AND CONTENT**

**Firms must submit one (1) original and twelve (12) paper copies of their proposal and one (1) complete copy in PDF format on a CD-ROM.** Proposals should be prepared on 8 ½ x 11 inch paper, using separators for the major sections of the proposal and each copy shall be bound in a three-ring notebook. Charts and/or schedules that are printed on 11 x 17 inch paper shall be folded to 8 ½ x 11 size to fit in the binder. **The original shall be unbound. If proposals are bound by any other means, the Firm will automatically be disqualified.** Only the original paper document shall be considered the official proposal.

The proposal should be prepared simply and economically, providing a straightforward and concise description of the Firm's ability to meet the requirements of this RFP. Standard brochures are not to be included in the proposal. Sections 2, 3, 4, and 5 of the proposals are limited to a total of thirty pages maximum. The cover letter, executive summary, responses to Sections 6 and 7, and tabs and section dividers are excluded from the thirty-page limitation. Proposed project staff resumes are also excluded from the thirty-page limitation. Clarity is essential and will be considered in assessing the proposers' capabilities.

Organize your proposal in the order given below. Title and number each item the same way it appears in each section. You must respond to every item in the manner requested.

The RFP Proposal shall include a cover letter and seven (7) distinct sections:

**COVER LETTER. \*\***

**SECTION 1: Executive Summary \*\***

**SECTION 2: General Requirements**

**SECTION 3: Technical Proposal**

**SECTION 4: Management Proposal**

**SECTION 5: Firm's Recent and Relevant Experience**

**SECTION 6: Price Proposal \*\***

**SECTION 7: Certifications and Assurances Form \*\***

**\*\* These sections are excluded from the 30-page limit**

**V-6 SIGNATURES**

The Cover Letter, the Certifications and Assurances and Price Proposal Certification forms must be signed and dated by a person authorized to legally bind the Firm to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship.

**V-7 MANDATORY LETTER OF INTENT TO PROPOSE**

Firms wishing to participate in this process must provide a written Letter of Intent to Propose, Exhibit D is provided to assist Firms. The RFP coordinator must receive this letter by 5:00 P.M., Pacific Time, on the date specified in the Schedule of Procurement Activities, Section V.2 of this RFP. **Failure to submit a Letter of Intent will result in disqualification from further participation in this RFP process. The Letter of Intent may be submitted by e-mail to the RFP Coordinator. Firms submitting a Letter of Intent by e-mail will receive an e-mail confirmation of receipt.** Submission of a Letter of Intent constitutes the Firm's acceptance of the procedure, review criteria, and administrative instructions of this RFP.

**ONLY FIRMS SUBMITTING A LETTER OF INTENT WILL RECEIVE AMENDMENTS AND OTHER INFORMATION REGARDING THIS RFP. FAILURE TO SUBMIT A LETTER OF INTENT TO WSDOT, BY THE DEADLINE SPECIFIED, WILL RESULT IN THE REJECTION OF THE FIRM'S PROPOSAL.**

**V-8 AMENDMENT(S) TO THE RFP**

The Commission reserves the right to revise the RFP and/or to issue amendments to the RFP. For this purpose, questions and answers submitted to the Commission's RFP coordinator and other pertinent information will be provided as an amendment to the RFP.

In the event that it becomes necessary to revise any part of this RFP, an amendment will be provided to all Firms who have submitted a Letter of Intent to the Commission's RFP coordinator by the date specified in Section V.2, Schedule of Procurement of Activities.

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The Firm is instructed to disregard any oral representations it may have received. Proposal evaluation will be based on the material contained in the RFP and any amendments issued to the RFP.

The Commission also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract. In the event it becomes necessary to revise any part of the RFP, an amendment will be provided to all those who submitted a Letter of Intent to Propose.

**V-9 PREPARATION AND TRAVEL COSTS**

The Commission and the Department will not be liable for any costs associated with preparation and presentation of a proposal submitted in response to this RFP.

The Firm assumes responsibility for its personnel's travel and associated costs as they relate to the competing on this project. These costs must be considered in the cost of the proposal.

**V-10 SUBMISSION LIMIT**

After submission, Firms will not be allowed to amend the proposal. Responses consisting solely of marketing material are not acceptable and will be rejected.

**V-11 FAILURE TO COMPLY**

THE PROPOSING FIRM MUST PROVIDE A RESPONSE TO ALL SECTIONS OF THE RFP ESPECIALLY SECTIONS SPECIFIED AS "MR" (MANDATORY REQUIREMENT). A FIRM'S FAILURE TO COMPLY WITH ANY PART OF WSDOT'S REQUEST FOR PROPOSAL MAY RESULT IN THE FIRM'S PROPOSAL BEING DISQUALIFIED FOR BEING NON-RESPONSIVE TO WSDOT'S REQUEST.

**V-12 ACCEPTANCE PERIOD**

Proposals providing less than ninety (90) days for acceptance by the Commission from the due date set for receipt of proposals will be considered non-responsive and will be rejected. Proposals that do not address all areas requested by this RFP may be deemed non-responsive and may not be considered for a possible contract resulting from this RFP.

**V-13 REJECTION OF PROPOSALS**

The Commission reserves the right at its sole discretion to reject all proposals received without penalty and not to issue a contract as a result of this RFP. The Commission also reserves the right at its sole discretion to waive minor administrative irregularities contained in any proposal.

**V-14 RECEIPT OF INSUFFICIENT COMPETITIVE PROPOSALS**

If the Commission receives only one (1) responsive proposal as a result of the RFP, the Commission reserves the right to select the contractor which best meets the Commission's needs. The Firm need not be the sole proposer.

**V-15 MOST FAVORABLE TERMS**

The Commission reserves the right to make an award without further discussion of the proposal submitted. An exception is that the RFP Coordinator may contact the Firm for clarification of a portion of the Firm's proposal. Therefore, the proposal should be submitted initially on the most favorable terms, which the Firm can propose. There will be no best and final offer process. The Firm should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate all of the Firm's proposal. It is understood that the proposal will become a part of the official file on this matter without obligation to the Commission.

**V-16 OBLIGATION TO CONTRACT**

This RFP does not obligate the State of Washington or the Commission to contract for service(s) specified herein.

**V-17 COST TO PROPOSE**

The Commission will not be liable for any costs incurred by the Firm in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

The Commission also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract. In the event it becomes necessary to revise any part of the RFP, an amendment will be provided to all those who submitted a Letter of Intent.

**V-18 PROPOSAL REJECTIONS**

Solely the Commission will make determination of clarity and completeness in the responses to any of the provisions in this RFP. The Commission reserves the right to require clarification, additional information, and materials in any form relative to any or all of the provisions or conditions of this RFP.

The Firm is specifically notified that failure to comply with any part of the Request for Proposals may result in rejection of the proposal as non-responsive.

The Commission reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP. The Commission also reserves the right at its sole discretion to waive minor administrative irregularities contained in any proposal.

**V-19 PUBLICITY**

No informational pamphlets, notices, press releases, research reports, and/or similar public notices concerning this project may be released by the Apparent Successful Firm without obtaining prior written approval from the Commission.

**V-20 WAIVERS**

The Commission reserves the right to waive specific terms and conditions contained in this RFP. It shall be understood by Firms that the proposal is predicated upon acceptance of all terms and conditions contained in this RFP unless the Firm has obtained such a

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waiver, in writing, from the Commission prior to submission of the proposal. Such a waiver, if granted, will be granted to all Firms.

**V-21 STATE CONSTITUTION – APPLICABLE PROVISIONS**

**V.21.1 Payment Advances**

The Constitution of the State of Washington prohibits payments in advance for anticipation of receipt of goods or services. Contractors are paid after goods are delivered and accepted and/or services rendered.

**V.21.2 Conditional Sales Contract**

The State may not enter into a conditional sales contract unless the contract can be canceled for non-allocation of funds by the legislature with no penalty to the State.

**V-22 RESPONSIVENESS**

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in the RFP. Only responsive proposals will be forwarded to the Evaluation Team for further review.

**V-23 AWARD BASED ON MULTIPLE FACTORS**

The evaluation process is designed to award the contract to the Firm whose proposal best meets the requirements of this RFP. The final selection, if any, will be based upon the Evaluation Team's recommendation after analysis of the proposals submitted.

**V-24 NOTIFICATION TO UNSUCCESSFUL FIRMS**

Firms whose proposals have not been selected will be notified via email.

**V-25 DEBRIEFING OF UNSUCCESSFUL FIRMS**

Firms, which submitted a proposal and were not selected, will be given the opportunity for a debriefing conference. The RFP Coordinator must receive the request for a debriefing conference within five (5) business days after the notification of unsuccessful Firm letter is sent. The debriefing shall be held within five (5) business days of the request.

Discussion will be limited to a critique of the requesting Firm's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

**V-26 RESOLUTION OF COMPLAINTS AND PROTESTS**

**V-26.1 Complaints**

A complaint may be made before a Firm responds to a solicitation document if the Firm believes that the document unduly constrains competition or contains inadequate or improper criteria. The written complaint must be made to the issuing agency before the due date of the solicitation response. The agency solicitation process may, however, continue.

### **V-26.2 Protests:**

Protests may be made after the agency conducting the acquisition has announced the apparently successful Firm and after the protesting Firm has had a debriefing conference with that agency. Protests may be made on only these grounds:

- Arithmetic errors were made in computing the score.
- The agency failed to follow procedures established in the solicitation document, or applicable state or federal laws or regulations.
- There was bias, discrimination, or conflict of interest on the part of an evaluator.

Protests are always initially made to the agency conducting the acquisition. A person authorized to bind the Firm to a contractual relationship must sign the protest letter. The agency must receive the written protest within five (5) business days after the debriefing conference. It must also postpone further steps in the acquisition process until the protest has been resolved.

Individuals not involved in the protested acquisition will objectively review the written protest material submitted by the Firm and all other relevant facts known to the agency. The agency must deliver its written decision to the protesting Firm within five business days after receiving the protest, unless more time is needed. The protesting Firm will be notified if additional time is necessary.

**Form and Content:** A written protest must contain the facts and arguments upon which the protest is based and must be signed by a person authorized to bind the Firm to a contractual relationship. At a minimum, this must include:

- The name of the protesting Firm, its mailing address and phone number, and the name of the individual responsible for submission of the protest.
- Information about the acquisition and the acquisition method and name of the issuing agency.
- Specific and complete statement of the agency action(s) protested.
- Specific reference to the grounds for the protest.
- Description of the relief or corrective action requested.

Protests shall be addressed to:

Paula Hammond, Chief of Staff  
Washington State Department of Transportation  
PO Box 47316  
Olympia, Washington 98504-7316

The protesting Firm must also forward a copy of the protest to the RFP Coordinator at the same time.

Upon receipt of a protest, a protest review will be held by the Department by Paula Hammond or her designee. All available facts will be considered, and a decision will be issued within five (5) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay within five (5) business days of receipt of the protest.

**V-27 PROPRIETARY INFORMATION / PUBLIC DISCLOSURE**

Materials submitted in response to this competitive procurement shall become the property of the Commission.

All proposals received shall remain confidential until the contract, if any; resulting from this RFP is awarded, i.e., signed, and approved by all parties. Thereafter the proposals shall be deemed public records as defined in RCW 42.17.250 to 42.17.340, "Public Records."

In the event a Firm desires to claim portions of his/her proposal as exempt from public disclosure, the Firm must identify those portions in the proposal cover letter. Each page of the proposal claimed to be exempt must be clearly identified as "confidential." The Commission has the authority to decide whether any or all of the claimed exemptions are appropriate.

The Commission will consider a Firm's request for exemption from disclosure; however, the Commission will make a decision predicated upon applicable laws. Marking the entire proposal exempt from disclosure will not be honored. The Firm must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected Firm has been given an opportunity to seek a court injunction against the requested disclosure.

The proposal of the successful Firm generally becomes part of the contract, which is subject to public disclosure. Data contained in the proposal, all documentation provided, and innovations developed as a result of the contract become the property of the Commission.

## **SECTION VI – PROPOSALS**

### **VI-1 COVER LETTER**

A single-page transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm. The transmittal letter should include the name, telephone number and e-mail of the Firm's contact person.

### **VI-2 EXECUTIVE SUMMARY (Section 1)**

The Executive Summary (maximum of two pages) should include a brief discussion of the Firm's understanding of the purpose and scope of the project, the consultant's proposed approach to the project, identification of the proposed project manager and any assumptions made in the proposed approach.

### **VI-3 GENERAL REQUIREMENTS (Section 2)**

In the General Requirements Section, the firm must describe its organization. The firm must provide all information requested in the order specified below. This section is initially scored on a pass/fail basis to ensure the Firm has submitted the required information. This section is then evaluated according to the evaluation criteria in Section VII. Failure to respond to any mandatory requirements will be viewed as non-responsive and the proposal will be disqualified. If the proposal includes a subcontractor(s), the Firm must submit specific information for each subcontractor.

#### **VI-3.1 Business Description and Organization**

The Firm must provide all information requested in the exact order specified below:

##### **VI-3.1.1 Business Identification (MR)**

The Firm must provide an overview of the Firm, including, but not limited to the following:

- Firm's name and address and main business location
- State the location of the facility from which the Firm would operate, the telephone, fax and e-mail address
- Firm size and length of time in business
- Areas of specialization and expertise

##### **VI-3.1.2 Company Officers (MR)**

The Firm must provide the names, addresses, and telephone numbers of principal officers (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)

State the name, the title, or position, address, email address, fax and telephone number of the individual who would have primary responsibility for the project resulting from this RFP. Disclose who within the firm will have prime responsibility and final authority for the work under the proposed contract.

**VI-3.1.3 Legal Status (MR)**

Specify the legal status of the Firm (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business, as the entity now exists.

**VI-3.1.4 Tax Information (MR)**

Provide your Firm's Federal Employer Tax Identification number and the Washington Uniform Business Identification (UBI) number issued by the State of Washington Department of Revenue.

**VI-3.2 Previous State Contracts (MR)**

If the Firm or any party named previously contracted with the state of Washington during the past 24 months, indicate the name of the state agency, the contract number and describe the work and/or provide other information available to identify the contract.

**VI-3.3 Current Contracts (MR)**

The firm must disclose all current contracts with:

- The Washington State Department of Transportation
- The Washington State Transportation Commission
- Other governmental or private organizations implementing or promoting specific rail technologies or approaches.

For each contract disclosed, provide an explanation as to how these arrangements do not impair the firm's or employees' personal, external or organizational independence. The Commission reserves the right to request additional information from the Firm to ascertain whether contractual or other relationships impose actual impairments to independence. Failure to provide additional clarifying information may be grounds for disqualification from this procurement.

**VI-3.4 Former Employee Status (MR)**

If any employee of the Firm or Subcontractor was an employee of the state of Washington during the past 24 months, or is now an employee of the state of Washington, identify the individual by name, state agency previously or currently employed by, job title or position held and separation date.

**VI-3.5 Sub-Contracting (MR)**

If any technical functions will be addressed by a subcontractor (any person not in the full time employ of the Firm or consulting Firm who will act as primary Firm in providing the external consulting services), the subcontractors' resume(s) will display the word "SUBCONTRACTOR" in bold letters clearly printed across the top of the first page. In addition, supply the subcontractor's response to the information requested in the Section VI.

### **VI-3.6 Contract Terminations (MR)**

If the Firm has had a contract terminated for default in the last five (5) years, describe such incident. Termination for default is defined as notice to stop performance due to the Firm's non-performance or poor performance. Issue of performance may have been (a) not litigated due to inaction on the part of the Firm, or (b) litigated and such litigation determined that the Firm was in default.

Submit full details of the terms for default. Identify the other party, its name, address, and phone number. Present the Firm's position on the matter. The Commission will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience.

If the Firm has experienced no such termination for default in the past five (5) years, so indicate.

### **VI-3.7 Firm Must Provide Business References (MR)**

The Firm must supply names; addresses and telephone numbers of a minimum of three (3) non-Firm owned business references for which the Firm has completed similar work recently. Projects listed in Section VI-7 (Firm's Recent and Relevant Experience) may be used to satisfy this requirement. Include a brief description of the type of service provided. **Note: At least ONE of the THREE references required in this section must be for the projects listed in Section VI-7 (Firm's Recent and Relevant Experience).** The Firm must grant permission to the Commission to independently contact the references at the Commission's convenience. Do not include current WSDOT or Commission staff as references.

The references will be asked about your approach used to deliver services for the referenced project and the quality of services delivered. All reference call attempts and completed calls will be logged with date, time, name of person being called, and the name of person making the call. All telephone calls, regardless of reference location will be made from 6 AM to 3 PM, Pacific Daylight Time. The Commission's inability to contact the named individual(s) or a suitable alternate reference representative after three (3) attempts via telephone or email will invalidate the reference. **Any Firm failing to submit the required number of business references will be eliminated from further consideration.**

The Commission will not accept any other terms for contacting references other than what is stated above.

### **VI-3.8 Acceptance of the Commission's General Terms and Conditions (MR)**

THE FIRM MUST CLEARLY STATE IN THEIR RESPONSE TO THIS SECTION THAT THEY ACCEPT THE TERMS AND CONDITIONS AS PRESENTED IN THIS RFP.

THE APPARENTLY SUCCESSFUL FIRM WILL BE EXPECTED TO ENTER INTO A CONTRACT WITH THE COMMISSION WHICH IS

SUBSTANTIALLY THE SAME AS THE CONTRACT ATTACHED AS EXHIBIT E, INCLUDING WSDOT'S GENERAL TERMS AND CONDITIONS.

IN NO EVENT IS A FIRM TO SUBMIT ITS OWN STANDARD CONTRACT TERMS AND CONDITIONS AS A RESPONSE TO THIS RFP. THE FIRM MAY SUBMIT SUGGESTED EXCEPTIONS OR MODIFICATIONS THAT THEIR FIRM MAY HAVE TO THE PROPOSED TERMS AND CONDITIONS.

#### **VI.3.9 Proof of Insurance (MR)**

Each Firm must indicate in the Cover Letter and as a condition of contract award, that they will provide proof of insurance as required in Exhibit E.

#### **VI-4 TECHNICAL PROPOSAL (SECTION 3)**

The technical proposal should respond to each of the requested services enumerated in Section II-2, the deliverables enumerated in Section II-3, and the proposed detailed work program (Exhibit A). The technical proposal should describe the approaches, methodologies, and techniques that will be used to provide these services and produce these deliverables. The technical proposal should describe in as much detail as possible anticipated tasks, levels of effort, schedules, coordination work and meetings with state agencies, local governments, and private firms, data requirements, and other technical aspects of the firm's proposal.

**The tasks described in Section II-2 and Exhibit A are not meant to be exact descriptions of consultant's work product. Responding firms are expected to provide their best efforts to propose a program that meets the study's goals and addresses the unique aspects of Washington State's transportation system.**

Proposals must include all costs associated with the Firm accomplishing said work. Costs must include, but is not limited to; labor, travel, lodging, per diem, administrative and any and all incidentals necessary to complete the performance of the proposed contract. The Commission will not be responsible for any costs expended not included in the Firms proposal. Firm must identify costs per Deliverable identified in the Work Plan, Schedule and Budget Section.

#### **VI-4.1 Work Plan, Schedule and Budget**

The Firm must submit a detailed preliminary work plan for each project task described in Exhibit A of this RFP. Discuss how you will conduct each task of the project and prepare deliverables. Specific deliverables are listed below. The work plan shall include a preliminary project schedule and budget. The description of the proposal approach to performing the project should fully discuss the tasks in sufficient detail to demonstrate a clear understanding of the project. The schedule should show the expected sequence of tasks and important milestones. Identify all staff included in the work plan by name and identify the specific tasks for which each individual will be responsible. The Contractor, in consultation with Commission staff, will develop a final Work Plan, Schedule and Budget.

**VI-4.1.1 Work Plan (MR)**

The Firm's preliminary work plan must address all work or project requirements contained in the RFP necessary to accomplish the Scope of Work. Each Firm's work plan must be in sufficient detail to convey to members of the evaluation team that the Firm has the subject knowledge and skills necessary to successfully accomplish the project.

**VI-4.1.2 Schedule and Budget (MR)**

The Firm must submit a preliminary schedule and budget, with costs identified by tasks and subtasks described in Exhibit A and corresponding to the detailed work plan submitted in response to VI-2.1.1 above. The budget should present an estimated breakdown of hours and expenses by task. It should identify key personnel and job descriptions, including billing rates, in relation to each task so that a full explanation of the resources committed to the project is outlined. **The price proposal submitted for Section 6 should correspond to the Schedule and Budget submitted for this Section.** A task budget should also be submitted for proposed sub-consultants with contracts estimated to exceed \$25,000.

**VI-4.1.3 Deliverables**

Firm shall be responsible for submitting the deliverables described in Section II-3.

**VI-5 MANAGEMENT PROPOSAL (SECTION 4)**

Describe how your firm proposes to organize, manage, control, and report on the status of the project. Identify all critical milestones.

**VI-5.1 Project Organization (MR)**

RFP proposals will be evaluated with significant weight given to a strong project organization. It will be essential that team members are committed to the project during their period of participation and that reporting lines are clear. There must be a lead individual within the Firm who the Commission can successfully work with to resolve any problems, issues, or concerns.

The Firm must provide a project organizational chart indicating lines of authority for personnel who will be involved in the performance of the potential contract. Identify the staff that will be assigned to the project, including those who will lead the interactions with state implementing and oversight agencies, and those who will conduct the on-site fieldwork. Discuss staff responsibilities and the amount of time they will devote to the project by task or issue area. Succinctly state each person's qualifications and relevant experience. The project organization chart must also show lines of authority to the next senior level of management within the Firm.

**VI-5.2 Project Approach, Methodology and Control (MR)**

The Firm must provide a complete description of how they intend to manage the project with special considerations to:

- An overview of the project approach
- The project methodology
- Decision making process
- Communications
- Issues management
- Project management

#### **VI-5.3 Project Responsibilities and Qualifications (MR)**

The Firm must provide resumes for the named staff, which must include information on the individual's particular skills related to this project, education, experience, significant accomplishments, and responsibilities assumed on other projects. Resumes should be limited to one-page for each staff person assigned to the project and should include a description of the functional role each team member will perform. Summarize the individual's training and experience relevant to this project. Include resumes for key subcontractor personnel (if any) as well. *[Note: As attachments, staff resumes will not count against the specified page limitations.]*

**THE FIRM MUST COMMIT THAT STAFF IDENTIFIED IN ITS PROPOSAL WILL ACTUALLY PERFORM THE ASSIGNED WORK. ANY STAFF SUBSTITUTION MUST HAVE THE PRIOR APPROVAL OF THE COMMISSION**

#### **VI-6 PRICE PROPOSAL (SECTION 5)**

The Commission is accepting Fixed Bids ONLY. Fixed Bids must include all costs associated with the Firm accomplishing said work. Cost must include, but is not limited to: labor, travel, lodging, per diem, administrative and any and all incidentals necessary to complete the performance of the proposed contract. The Commission will not be responsible for any costs expended not included in the Firms Fixed Bid.

##### **VI-6.1 Price Proposal Certification (MR) (Exhibit B)**

The Commission is requesting a price proposal that includes the total price for all work efforts and deliverables to be provided in this response to this RFP.

Responses not providing a price proposal based on deliverables will be disqualified for not meeting the minimum mandatory requirements. Firms must complete, sign, and submit Exhibit B the Price Proposal Certification as part of their proposal.

##### **VI-6.2 Award Not Based on Lowest Price**

The evaluation process is designed to award this procurement not necessarily to the Firm with the lowest price proposal, but rather to the Firm whose proposal best meets the requirements of this RFP.

##### **VI-6.3 State Sales Tax**

Firms are required to collect and pay Washington State sales tax, if applicable.

#### **VI-6.4 Budget**

The Commission budget for this work is not to exceed \$950,000.

#### **VI-7 FIRM'S RECENT AND RELEVANT EXPERIENCE (SECTION 6)**

Indicate the Firm's experience relevant to this project, with particular attention to the staff that would be working on the project. Highlight the Firm's experience that will meet the study's goals and previous consulting or evaluative services including the following areas:

- 1) Knowledge of SAFETEA-LU and other national initiatives; background in working in and helping States work in local, regional and national initiatives, especially in rail efforts
- 2) Traffic and capacity projections, and assumptions underlying those projections, both passenger and freight rail.
- 3) Washington State historical program and policy determination process
- 4) Public/private partnerships in investment and operation projects, conceptually and empirically
- 5) Determination of public benefits of projects and programs
- 6) Knowledge of operating and investment history and plans of Class 1s and public and private short-line railroads, as well as plans of regional institutions such as ports, planning agencies , WSDOT, and others
- 7) Role of rail in a changing multi-modal transportation system in Washington and the United States
- 8) Freight-rail-dependent supply chain industries in Washington and the region
- 9) Public involvement and information process

Both the Firm's overall relevant experience and the quality of specific work products will be considered in determining the successful proposer.

List major contracts or other employment history during the last five (5) years that relate to the Firm's ability to perform the services called for under this RFP. Specifically list all work related to the items listed above, indicating the role of the firm on the project and specific staff assignments on the project. Include the contract numbers, period of performance, contact persons and telephone numbers.

The firm(s) selected will be expected to produce professional quality written reports that meet the Department standards for quality and that clearly document the basis for findings, conclusions, and recommendations.

The Firm must provide a one-page description of previous projects similar to the services requested in this RFP, indicating the project title, timing, budget, sponsoring agency and sponsor manager, and roles played by individuals proposed for this study. A maximum of five (5) project descriptions is desired. **Note: At least ONE of the projects submitted as required references must be listed here.** Please include the name of the

contact person and organization for which the work was done and year that the work was done. Please provide contact telephone number and e-mail address.

#### **VI-8 CERTIFICATIONS AND ASSURANCES (SECTION 7)**

The Certifications and Assurances form (Exhibit C) must be signed by the president or chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or all members of a joint venture included in the Firm's proposal.

### **SECTION VII - EVALUATION OF PROPOSALS**

#### **VII-1 EVALUATION PROCEDURE**

Proposals will be initially evaluated on a pass/fail basis based on an administrative review of the Firm's submission of the General Requirements provided in Section VI-3, and **whether a complete proposal has been received**. A Review Panel selected by the Commission will evaluate the proposals passing the administrative review.

Review Panel evaluations will be based on the written responses submitted by Firm to the entire RFP. The scores of the written responses will determine the top-qualifying Firms. Each portion of the written response shall be reviewed by an evaluation team, to be designated by the Commission, which will determine the proposal most responsive to the requirements stated in this RFP. Proposals will be evaluated strictly in accordance with the requirements set forth in this RFP and any amendments, which are issued.

Written proposals will be scored as follows:

<b>Section</b>	<b>Section Title</b>	<b>Points</b>
	Completed RFP	Initial Pass/Fail
3.0	Technical Proposal	40 percent
4.0	Management Proposal	15 percent
5.0	Firm's Experience	35 percent
6.0	Budget	10 percent
Total for Written Proposals		100 percent

The review panel will rank proposers, and short-listed proposers may be interviewed. Firm's identified project manager should represent the Firm in the interview. References will be checked for one or more of the final candidates. The Commission reserves the right to select a Contractor based solely on written proposals and to not convene oral interviews.

Oral presentations may be utilized in selecting the winning proposal. The top scoring finalists from the written evaluation may make an oral presentation, which will determine the final contact award. The Commission's RFP coordinator will contact top-scoring Firm(s) to schedule a date, time, and location. Commitments made by the Firm at the oral interview, if any, will be considered binding.

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Oral presentations will be limited to one hour and thirty minutes (1:30 hrs), of which forty-five minutes (45 min.) will be for the Firm's presentation and forty-five minutes (45 min.) for questions from the interview team. The presentation shall be led by the proposer's Project Manager and should include personnel who will be involved in the performance of the potential contract. Presentations shall include an overview of the proposed approach, project methodology, and controls they intend to use to successfully manage and control this project. References to a recent relevant successful project are desirable.

The panel will recommend a Contractor to the Commission, based on their evaluation of the written proposals or oral interviews, if held. The Commission will review the recommendation and select a Contractor to perform the services described in this RFP.

## **EXHIBIT A – DETAILED WORK PROGRAM**

### **Work Task 1. Review Role of Rail in State and National Economy:**

#### Task 1.1 Review of Literature on the Role of rail *(budget proviso a: assess infrastructure needs)*

This task will involve a review of literature at the national level and an in depth examination of the status and role of rail in the Washington economy. The review will include and consider studies and efforts currently underway at both the state and national level, with special attention being paid to the efforts undertaken as part of SAFETEA-LU. Also included in the review will be the 10 year plan of the Class 1 railroads in the state.

Under this task the roles of rail will be examined for passenger and freight on both main line and short line railroads. Consideration of the role will include the implications and benefits for the local, regional, state and national economies of maintaining a healthy rail system.

#### Task 1.2 Role and Impact of Rail in Multi-modal System *(budget proviso a: assess infrastructure)*

The consultant will examine and identify the complementary and competitive roles, and benefits achieved, of the railroad mode in a multi-modal transportation system. As a subpart of this work task the consultant will identify the impacts on communities of the operations of these rail lines and systems and the distribution of benefits and costs along those lines/corridors as the system is maintained or improved.

##### Work Product:

1. a **Technical Memorandum** of results of review of literature, focusing on contribution and importance of railroads in alternative economies.

1. b **Technical Memorandum** of findings on multimodal transportation and community impacts of rail operations.

### **Work Task 2: Determine the current status, future plans and needs of the passenger and freight rail service in the state, including the interaction between the two functions of freight and passenger:**

#### Work Task 2.1 Capacity needs, shortfall and impediments for freight rail *(budget proviso a: assess infrastructure needs)*

This work task will assess the rail freight infrastructure needs of the state by providing information to be used as a basis for 10-20 year staged strategic plans for the state's rail system. The consultant will examine existing projections for east-west and north-south freight traffic growth, in light of recent significantly increased traffic level experiences, domestic competitive issues for traffic, international trade expectations, and energy concerns.

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Under this work task the consultant will identify any institutional, operational and infrastructure impediments to the efficient movement of freight on Washington's railroad system. The "short fall" analysis will result in a detailed listing for each of the institutional, operational and infrastructure impediments identified above in this work task. Particular attention will be paid to the passenger/freight movement interactions, and associated trade-offs on efficiency and capacity, on the I-5 corridor as well as the freight needs of ingress and egress to Washington ports.

### Work Task 2.2 Capacity needs, shortfall and impediments for passenger rail (*budget proviso a: assess infrastructure needs*)

This work task will assess the passenger rail infrastructure needs of the state by providing information to be used as a basis for 10-20 year staged strategic plans for the state's rail system. The consultant will examine existing projections for east-west and north-south passenger traffic growth, in light of desired increases in passenger movements, and potential/existing conflicts with capacity of freight rail.

Particular attention will be paid to the passenger/freight movement interactions, and associated trade-offs on efficiency and capacity, on the I-5 corridor as well as the freight needs of ingress and egress to Washington ports. Past studies and plans developed by the Washington Department of Transportation, in conjunction with the Class 1 railroads and the cities, ports and regional planning authorities will serve as the starting point and the basis for the analysis.

### Work Task 2.3 Review and update of state rail investment plans (*budget proviso b: review powers, state interests*).

The review will include and consider, but not duplicate, recent and past studies, on capacity levels, in the local and surrounding regions as well as current plans of investment by the ports, Class 1 railroads and state/national efforts. The consultant will examine the current Infrastructure Investment plan associated with, for example but not solely, the Amtrak Cascades effort, and update modeled assumptions and resulting volume and capacity predictions as needed.

As information is developed in the other work tasks of this study these capacity needs and information on bottlenecks and chokepoints will be updated. The final product will be a series of reasonable scenarios, with consideration of the operational and investment plans of the Class 1 railroads, for program and policy development for any state/public involvement in the rail system. The underlying questions to be resolved are: what has changed and what is needed, if anything, as a result of those changes to set investment priorities with limited available resources? Recommended changes in the investment process will be detailed, if necessary.

### Work Task 2.4 Capacity needs, shortfall and impediments for short-line rail (*budget proviso a: assess infrastructure needs and budget proviso d: rail asset management plan*).

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A similar examination and specification of the value of the short-line railroad industry, future capacity needs, impediments and alternative investment strategies for the short-line railroads of the state is a subtask under this work task. The performance as to on-time movement and turn around at the port terminals affecting this rail industry segment is a charge to the consultant. This information will be utilized in later work tasks examining the role of the state in realizing any public benefits associated with efficient and sustainable short-line railroad operation in the state.

Work Task 2.5 Listing of proposed projects to deal with capacity constraints (*budget proviso a: assess infrastructure needs*)

The consultant will provide a preliminary listing of projects that deal with identified impediments to maintaining or increasing overall rail capacity. In a subsequent work task each project will be evaluated in detail as to potential benefits and costs, gainers and losers, and issues including safety, cross border issues and environmental concerns. The projects will also be examined as to interaction with or dependence on Class 1 railroad operating and management plans.

Work Products:

- 2. a **Technical Memorandum** on findings on freight growth, capacity needs and impediments, including conflicts with passenger traffic.
- 2. b **Technical Memorandum** on findings on passenger growth, capacity needs and impediments
- 2. c **Technical Memorandum** on findings on short line rail industry market share trends, capacity needs and impediments
- 2. d **Technical Memorandum** on reviewed and updated state investment plans.
- 2. e **Preliminary list** of capacity enhancing project alternatives

**Work Task 3: The major supply chains of the state will be analyzed as to production, structure, volume and corridor/direction of traffic, current and future levels of transportation capacity needs, and impediments existing in answering those needs.** (*budget proviso a: assess infrastructure needs*)

The freight-rail-dependent industry specific supply chain analysis, e.g. forestry and paper products, grain, manufacturing, container, international trade, etc. will focus on those shipments originating or destined for Washington State but will include regional system wide constraints or developments. Domestic and international supply chains will be examined under this work task, including both shippers and passenger movements in the state as to capacity needs and configuration, geographically, by sector and specific industry. The work of the freight section of the Washington Transportation Plan will provide the framework for the analysis.

Work Product:

- 3.1 **Technical Memorandum** evaluating the structure and transportation needs of the major supply chains serving Washington State freight-rail dependent shippers.

**Work Task 4: Communications and Public Involvement in Rail Plan Implementation**  
(*budget proviso c: recommend public policies*)

This work task deals with the creation of a plan, during the study and after the results are available, to involve stakeholders at the highest policy and implementation levels. During the study the consultant will coordinate with the Transportation Commission Rail Study Committee to present the results of the study as it progresses. Working with the sub committee the consultant will contact high level policy participants and present initial findings, listen to responses and concerns and then utilize these to further shape the on going study process. After the study is completed and scenarios/plans are in place, the consultant will have developed a plan for continued high level public/stakeholder involvement as the state moves through the implementation phase. Stakeholders contacted will be a broad spectrum, including but not limited to, from communities along potential line changes to ports to railroad officials to supply chain industries to specific mainline and short-line shippers.

Work Product:

4.1 **Technical Report** on plan and implemented process for public involvement at the highest level for stakeholders, throughout and following the period of the Statewide Rail Capacity and System Needs Study.

**Work Task 5: Investigate and determine the current and expected operating practices of participants in the rail industry** (*budget proviso a: assess infrastructure needs, and budget proviso c: recommend public policies*).

Both the Class 1 railroads (BNSF and UP) and the short-line railroads operate in a profit maximizing business model. This work task will examine the investment philosophy of the railroads, their business models and system management policies and draw implications for decreasing uncertainty of state investments and overall planning. The abilities to build capacity by increasing equipment utilization, both rolling stock and fixed assets, have been shown by members in the rail industry. Scheduling operations, car design, overall speed of operating trains, directional routing of trains are areas of potential equipment utilization improvements that the consultant will investigate. In subsequent work tasks the consultant will take the “on the ground” operating and investment practices, and potential improvements, into account as a menu of realistic policy options is developed.

The operating and investment plans of the Ports and regional authorities in the region will also be reviewed and implications for system wide improvements presented, both operationally and in policy options as the State role in the rail transportation system is developed in a later work task.

Work Product:

5.1 **Technical Memorandum** detailing needs and design to update the state investment plans to achieve maximum capacity, if necessary.

**Work Task 6: Examination and Positioning of the State in National and Regional Study and Funding Possibilities:** *(budget proviso c: recommend public policies)*

This work task will review and present the funding alternatives available to the State. This task will include detailing the new studies and programs under SAFETEA-LU, as well as others such as the Freight-Rail Bottom Line Report: Transportation Invest In America, and examining the potential for participation by Washington State in those studies and project/programs. The findings of these studies, and activities in the investment programs such as the National Corridor Infrastructure Improvement Program, will as they are completed during the timeframe of this Statewide Rail Capacity and System Needs Study, be included by the consultant in final reports and recommended plans of action.

The current powers and authorities held by the State in funding and participating in private/public investment projects that will enhance mainline and short-line rail capacity and operational performance will be reviewed and presented. The consultant will then examine, analyze and present different localized or regional funding (and associated policy) alternatives, including but not constrained to user fees, tolls, port and container fees, rail investment tax credits, etc. Possible initial alternatives will be presented to the Transportation Commission Rail Study Committee and feasible options selected for further study by the Committee.

Work Product:

6.1 **Technical Memorandum** detailing national and regional studies or funding alternatives, and potential interactions for the State of Washington, including alternative funding mechanisms.

**Work Task 7: Develop the conceptual approach underlying the rationale of State participation in private rail operations and investments:** *(budget proviso b: review powers and state interests and budget proviso c: recommend public policies)*

The rationale for public participation arises from the public benefits that are achieved as a result of that participation. These determine the defensible public sector capital investments in (private) freight rail solutions. The consultant will examine the issue of private/public participation, detailing the gainers and losers from conceptual investments. The final work product for this work task is a methodology or stepwise algorithm for the State to use in evaluating alternative policies, investments or projects, in a constrained budget scenario.

Work Product:

7.1 **Technical Memorandum** detailing the conceptual approach to determining the rationale for state involvement in private/public partnerships.

**Work Task 8: Develop a Menu of Policy Options, Analyzing the Full (private and public) costs and benefits of the alternatives.** *(budget proviso b: review powers and state interests and budget proviso c: recommend public policies)*

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Specific policy options will be inventoried as to impact on freight rail and passenger rail capacity. The analysis will be presented for a comprehensive list of specific choke point segments, e.g. actual interaction/trade-offs of passenger and freight rail in the I-5 corridor in the corridor between Tacoma and Vancouver, or ingress/egress into the Port of Tacoma. Detailed analysis of the benefits and costs of several specific alternative investments, as case studies, and the policy options guiding these investments will be developed by the consultant.

The policy analysis will be conducted by also examining the competitive and complementary roles of the modes in Washington State's transportation system, including those short-haul rail movements that support inter-modal centers and inland terminals designed to relieve some of the increasing port congestion. The range of options will be developed by different corridors, supply chain elements and local industries after the impediments to increasing the rail system's capacity to service the growing domestic and international traffic volumes are identified.

### Work Product:

8.1 **Technical Report** detailing a menu of policy options and the various capacity investments that are appropriate to each policy option. Several specific capacity enhancement projects under differing policy scenarios will be detailed to provide examples of application of this methodology.

### **Work Task 9: Develop a rail asset management plan for State owned assets:** (*budget proviso d: rail asset management plan and budget proviso and b: recommend public policies*)

Under this work task the consultant will identify national best practices for rail strategic planning and asset management. A survey of other states' experiences as to achievement of maximum public benefits and associated recommendations will be the vehicle by which the consultant accomplishes this work task. The focus under this task will be the short-line railroad system in the state but will also include other rail investments owned, partially owned or supported by the public sector.

In this work task the consultant will propose a vision, mission and goals for the State's short-line rail program operated by the Washington State Department of Transportation and will vet those items during the public interaction and participation with the stakeholders throughout the study. As part of the overall study analytical methods of measurement of rail capacity and performance quality will be developed and an appropriate methodology recommended. Included in this methodology are to be critical planning issues such as financial sustainability, appropriate performance measures, the means to continually monitor port and other regional authority's freight forecasts and experiences, support for Amtrak, regional assumptions about growth, new policy developments and other macro, but critical to on-the-ground planning and implementation, issues.

### Work Products:

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9.1 **Technical Memorandum** on findings on the best practices for rail asset management, with focus on, but not constrained to, short-line railroads.

9.2 **Technical Memorandum** detailing a vision, mission and goals of the state short-line rail program, including findings from 9.1 above.

9.3 **Technical Memorandum** discussing the application of performance and capacity measurement in monitoring planning issues surrounding rail transportation concerns.

**Work Task 10: Recommendations and Plans for Implementation:**

Work Task 10.1 Plan for state interest determination (*budget proviso b: review powers, state interests and budget proviso c: recommend public policies*)

This work task will produce several plans and methodologies based on the overall work assignments detailed above. The recommended items are to be practical (providing the means and approaches to utilization), with an accompanying assessment of the probability of political acceptability. First, an analytical plan for determining when state interest and public sector involvement in what is essentially a private rail system is defensible and appropriate is to be produced by the consultant.

Work Task 10.2 Investment plan for rail capacity (*budget proviso b: review powers, state interests and budget proviso c: recommend public policies*)

An investment plan, section by section of identified chokepoints and productive improvements, is to be developed under this work task. The plan will identify benefits and costs of improvements under consideration, with the distribution of those benefits and costs between private and public entities being part of the evaluation and findings. This plan will cover passenger and freight functions by the mainline railroads, and interactions/trade-offs, as well as full consideration of the short-line rail sector. The final work product here will be a series of scenarios of policy and investment options with attendant benefits and costs.

Work Task 10.3 Private sector and rail capacity (*budget proviso c: recommend public policies*)

A recommended methodology for determining and achieving maximum rail capacity from the private sector is the third component of this work task. Such a methodology will include consideration of train operations by the railroads, rolling stock utilization, maintenance programs, transit times, directional routing, etc. A suggested approach to public sector and railroad firms continuing dialogue and interaction is required as part of this methodology. It is in this role, to be developed by the consultant, that the State may act as the convener for regional discussion focusing joint attention on the emerging central issues facing the State's rail system over time.

Another underlying theme to be considered is the question dealing with the possibility of trading public investments for operational improvements by the railroads. Some operational changes may not be in the business plan of the railroads but public investment may help bring forth some of those changes that aid the industries of Washington, the region and the country, and ultimately the taxpayer. The process to achieve such trade-offs will be part of this methodology.

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Work Products:

10.1 **An Analytical plan** for determining when state interest and public sector involvement in what is essentially a private rail system is defensible and appropriate.

10.2 **An investment plan** of identified chokepoints and productive improvements, including identification of benefits and costs of improvements and the distribution of those benefits and costs between private and public entities being part of the evaluation and findings.

10.3 **Technical Memorandum** detailing a plan for continuing public sector and private stakeholder interaction, using as a base the private rail capacities resulting from alternative rail private operating and investment plans.

## **EXHIBIT B – PRICE PROPOSAL CERTIFICATION**

State your Firm's total cost, including all identified work, travel and per diem, and all other associated costs as specified in Section 6, Price Proposal, for the deliverables as defined in Section 3, Technical Proposal.

\$\_\_\_\_\_ Total Price Proposal

I hereby certify and acknowledge that this is a deliverable-based proposal for the Statewide Rail Capacity and System Needs Study that includes all costs for performing the deliverables as defined in Section 3, Technical Proposal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Firm's Name

## EXHIBIT C – CERTIFICATIONS AND ASSURANCES

*I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):*

1. The prices and/or data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
2. The attached proposal is a Firm offers for a period of ninety (00) days following receipt, and it may be accepted by the Commission without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the ninety (00) day period.
3. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this proposal. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
4. I/we understand that WSDOT will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the Commission, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
5. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Firm and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Firm or to any competitor.
6. No attempt has been made or will be made by the Firm to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

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Signature of Firm

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Title

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Date

## EXHIBIT D – MANDATORY LETTER OF INTENT TO PROPOSE

On behalf of my firm, I hereby certify that we intend to submit a proposal to provide consulting services to the Washington State Transportation Commission for the Statewide Rail Capacity and System Needs Study. I have read the Request for Proposal for the procurement of these services and accept the conditions set forth therein.

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Firm Name (typed)

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Legal Name (typed)

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Address (typed)

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Chief Executive Officer, Name and Title (typed)

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Chief Executive Officer, Signature

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Date

This letter of Intent to Propose must be received by the RFP Coordinator by 5:00 p.m., November 21, 2005, Pacific Daylight Time. It may be mailed or faxed or submitted electronically via e-mail to:

Tami Grant, RFP Coordinator  
Washington State Department of Transportation  
**Hand Deliveries to: 310 Maple Park Avenue SE, First Floor Reception Desk**  
P.O. Box 47408  
Olympia, WA. 98504-7408  
Phone: 360-705-7549  
FAX: 360-705-6848  
Email: grantt@wsdot.wa.gov

***PLEASE NOTE: If you submit this form and later decide not to submit a proposal, please notify Tami Grant. Thank you.***

# **Exhibit E**

## **Sample - Personal Services Contract**

CONTRACT NO. AD0000X

BETWEEN  
WASHINGTON STATE  
TRANSPORTATION COMMISSION  
AND  
XXXXX

THIS CONTRACT made by and between the Washington State Transportation Commission, hereinafter referred to as the "COMMISSION" and XXXXXX, hereinafter referred to as the "Consultant".

### **PERIOD OF PERFORMANCE**

The period of performance under this Contract will be from December XX, 2005 or the date the Contract is executed by the COMMISSION, whichever is later, through April, 2007, unless sooner terminated as provided herein.

The established completion time shall not be extended because of any delays attributable to the Consultant, but may be extended by the COMMISSION, in the event of a delay attributable to the COMMISSION, or because of unavoidable delays caused by an act of God or governmental actions or other conditions beyond the control of the Consultant. A prior contract amendment issued by the COMMISSION is required to extend the established completion time. In the event of such delays, COMMISSION shall pay the Consultant for the work performed on the project for milestone reached prior to the period of delay equivalent to the value of the work performed by Consultant as agreed to by both parties.

### **STATEMENT OF WORK**

The Consultant shall furnish all services, labor, equipment, materials, supplies, and otherwise do all things necessary for or incidental to the performance of work as detailed in Exhibit A, Statewide Rail Capacity and System Needs Study: Work Plan, which is attached hereto and by reference made a part of this Contract.

Exhibit A contains the General Terms and Conditions governing work to be performed under this Contract, the nature of the working relationship between the COMMISSION and the Consultant, and specific obligations of both parties. Exhibit A is also attached hereto and by reference made a part of this Contract.

### **COMPENSATION AND PAYMENT**

The COMMISSION shall pay a firm fixed price not to exceed XXXXX for the performance of all things necessary for or incidental to the performance of work as set forth in Exhibit B. Consultant's compensation for services rendered shall be in accordance with the Billing Schedule, Exhibit C, Budget Summary, Exhibit D and Request for Proposals, Exhibit E, which are attached hereto and by this reference made part of this Contract.

Payments made by the COMMISSION to the Consultant are full compensation for all labor, equipment, materials, supplies and incidentals necessary to complete the Statewide Rail Capacity and System Needs Study: Work Plan, Exhibit B, for this Contract and in accordance with Exhibit C and D.

## **Exhibit E**

### **Sample - Personal Services Contract**

Payments shall be made in accordance with the Payment Schedule (Exhibit C).

#### **Invoice and Payment Procedures**

All invoices for payment will be invoiced to Washington State Transportation Commission. The COMMISSION will pay the Consultant upon receipt of properly completed invoices, which shall be submitted not more often than monthly. The invoices shall describe and document to the COMMISSION's satisfaction a description of the work performed and the progress of the project and fees.

Payment shall be considered timely, if made by the COMMISSION within thirty (30) days after receipt of properly completed invoices. Invoices shall reference the COMMISSION Contract No. AD0000X. Invoices shall be sent to:

Washington State Transportation Commission  
Attn.: Reema Griffith  
PO Box 47308  
Olympia, WA 98504-7308

All Payments will be remitted by mail.

#### **CONTRACT PROJECT MANAGEMENT**

##### **Consultant Project Manager**

Consultant shall appoint a Project Manager for the COMMISSION's account under this Contract who will provide oversight of Consultant activities conducted hereunder. Consultant's Project Manager will be the principal point of contact for the COMMISSION concerning Consultant's performance under this Contract. Consultant shall notify the COMMISSION Contract Administrator and the COMMISSION Project Manager, in writing, when there is a new Consultant Account Manager assigned to this Contract. The Consultant Project Manager information is:

Consultant Project Manager:  
Address:  
Phone:  
Fax:  
E-mail:

##### **COMMISSION Technical Project Manager**

The COMMISSION shall appoint a COMMISSION's Technical Project Manager for this Contract and will provide oversight of the activities conducted hereunder. The COMMISSION's Technical Project Manager will be the principal contact for Consultant concerning business activities under this Contract. The COMMISSION shall notify Consultant, in writing, when there is a new COMMISSION's Technical Project Manager assigned to this Contract. The COMMISSION Technical Project Manager information is:

COMMISSION Technical Project Manager:  
Address:  
Phone:  
Fax:  
E-mail:

## **Exhibit E**

### **Sample - Personal Services Contract**

#### **ASSURANCE**

The COMMISSION and the Consultant agree that all activity pursuant to this Contract will be in accordance with all applicable current federal, state and local laws, rules and regulations.

#### **ORDER OF PRECEDENCE**

The items listed below are incorporated by reference herein. In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable Federal and Washington State Statutes and Regulations,
- B. Special Terms and Conditions as contained in this Basic Contract instrument,
- C. Exhibit A - General Terms and Conditions,
- D. Exhibit B - Statewide Rail Capacity and System Needs Study: Work Plan,
- E. Exhibit C - Billing Schedule,
- F. Exhibit D – Budget Summary,
- G. Exhibit E - Request for Proposals No. ACQ-2005-0923-RFP,
- H. Exhibit F Consultant's Proposal dated XXXXXX, and
- I. Any other provision, term or material incorporated herein by reference or otherwise incorporated.

#### **CONFORMANCE**

If any provision of this Contract violates a statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

#### **ENTIRE AGREEMENT**

This Contract including referenced Exhibits represents all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF: The COMMISSION and the Consultant have signed this Contract.

Washington State  
Transportation Commission

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant Attorney General

**Exhibit E**  
**Sample - Personal Services Contract**

**EXHIBIT A**

**GENERAL TERMS AND CONDITIONS**

1. DEFINITIONS -- As used throughout this Contract, the following terms shall have the meaning set forth below:

"COMMISSION" shall mean the Washington State Transportation Commission, of the State of Washington, any division, section, office, unit or other entity of the Commission, or any of the officers or other officials lawfully representing the Commission. For purposes of this Contract, any reference to state agencies shall include the Commission.

"Consultant" shall mean that firm, provider, organization, individual or other entity performing services under this Contract, and shall include all employees of the Consultant.

"Subcontractor" shall mean one not in the employment of the Consultant, who is performing all or part of those services under this Contract under a separate contract with the Consultant. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

2. INDEPENDENT CAPACITY OF THE CONSULTANT -- The parties intend that an independent consultant relationship will be created by this Contract. The Consultant and his or her employees or agents performing under this Contract are not employees or agents of COMMISSION. The Consultant will not hold himself/herself out as nor claim to be an officer or employee of COMMISSION or of the state of Washington by reason hereof, nor will the Consultant make any claim of right, privilege or benefit which would accrue to an employee under law. Conduct and control of the work will be solely with the Consultant.

3. COMPLIANCE WITH CIVIL RIGHTS LAWS

During the performance of this Contract, Consultant shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VI, Non-Discrimination, Title 49 CFR, Part 21 and Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Consultant's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the Termination for Default sections, and Consultant may be declared ineligible for further contracts with the COMMISSION.

4. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS -- In the event of the Consultant's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy this Contract may be rescinded, canceled or terminated in whole or in part, and the Consultant may be declared ineligible for further contracts with the COMMISSION. The Consultant shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

5. UTILIZATION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES -- In accordance with legislative findings and policies set forth in Chapter 39.19 RCW the COMMISSION encourages participation by Minority and Women's Business Enterprise firms certified by OMWBE. Voluntary goals for participation are set forth in the special terms and conditions of this Contract.

## **Exhibit E**

### **Sample - Personal Services Contract**

If any part of this Contract, including the supply of materials or equipment, is actually subcontracted during this Contract, then prior to final acceptance the Consultant shall submit a statement of participation indicating what WMBE's were used and the dollar amount of their subcontractors.

6. **SUBCONTRACTING** --Neither the Consultant nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the COMMISSION. The COMMISSION hereby grants Consultant the approval to use the subcontractors set forth in Exhibit F.

No permission for subcontracting shall create between the Commission and subcontractor any contract or any other relationship.

Additionally, the Consultant is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts.

7. **INDEMNIFICATION** – To the fullest extent permitted by law, Consultant shall indemnify, and hold the State of Washington, agencies of the State including the Commission and all officials, agents and employees of the State harmless from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages or costs, of whatsoever kind or nature brought against the State arising out of, in connection with or incident to the execution of this Contract and/or Consultant's negligent or wrongful performance or failure to perform any aspect of this Contract. Provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the Consultant, its agents and/or employees and (b) the State, its agents, employees and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Consultant, its agents and/or employees and provided further, that nothing herein shall require the Consultant to hold harmless or defend the State, its agents, employees and/or officers from any claims arising from the sole negligence of the State and/or its agents, employees and/or officers. This indemnification shall survive any termination of this Contract.

Consultant waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the State and its agencies, officials, agents or employees.

8. **COVENANT AGAINST CONTINGENT FEES** -- The Consultant warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the Consultant for the purpose of securing business. The COMMISSION shall have the right, in the event of breach of this clause by the Consultant, to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.
9. **CONFLICT OF INTEREST** – The COMMISSION may, by written notice to the Consultant terminate this Contract if it is found after due notice and examination by the COMMISSION that there is a violation of the; Ethics in Public Service Act, Chapter 42.52 RCW or any similar statute involving the Consultant in the procurement of, or performance under, this Contract.

In the event this Contract is terminated as provided above, the COMMISSION shall be entitled to pursue the same remedies against the Consultant as it could pursue in the event of a breach of the Contract by the Consultant. The rights and remedies of the COMMISSION provided for in this

## **Exhibit E**

### **Sample - Personal Services Contract**

clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the COMMISSION makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

10. TREATMENT OF ASSETS --Title to all property furnished by the COMMISSION shall remain in the COMMISSION. Title to all property furnished by the Consultant, for which the Consultant is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the COMMISSION upon delivery of such property by the Consultant. Title to other property, the cost of which is reimbursable to the Consultant under this Contract, shall pass to and vest in the COMMISSION upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the COMMISSION in whole or in part, whichever first occurs.
- A. Any property of the COMMISSION furnished to the Consultant shall, unless otherwise provided herein or approved by the COMMISSION, be used only for the performance of this Contract.
  - B. The Consultant shall be responsible for any loss or damage to property of the State of Washington, which includes the property of the Washington State Department of Transportation (WSDOT) and of the COMMISSION which results from the negligence of the Consultant or which results from the failure on the part of the Consultant to maintain and administer that property in accordance with sound management practices.
  - C. If any property referred to above in subsection B is lost, destroyed or damaged, the Consultant shall immediately notify the COMMISSION and shall take all reasonable steps to protect the property from further damage.
  - D. The Consultant shall surrender to the COMMISSION all property of the COMMISSION prior to settlement upon completion, termination or cancellation of this Contract.

All reference to the Consultant under this clause shall also include Consultant's employees, agents or Subcontractors.

11. ASSIGNMENT-- The work to be provided under this Contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.
12. RECORDS MAINTENANCE – The Consultant shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Consultant shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under this Contract, shall be subject at all reasonable times to inspection, review or audit by the COMMISSION, personnel duly authorized by the COMMISSION, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

## **Exhibit E**

### **Sample - Personal Services Contract**

13. CONFIDENTIALITY / SAFEGUARDING INFORMATION - Consultant acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Confidential information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, or agency security data. Consultant agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release or disclose it to any other party. Consultant agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by the COMMISSION. Consultant agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

Immediately upon expiration or termination of this Contract, Consultant shall, at the COMMISSION's option: (i) certify to the COMMISSION that Consultant has destroyed all Confidential Information, or (ii) return all Confidential Information to the COMMISSION, or (iii) take whatever other steps the COMMISSION requires of Consultant to protect the COMMISSION's Confidential Information.

Consultant shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; why the Confidential Information was received; who received, maintained and used the Confidential Information; the purposes of which the Confidential Information was received; and the final disposition of the Confidential Information. Consultant's records shall be subject to inspection, review or audit in accordance with clause number 12. Records Maintenance.

The COMMISSION may use any reasonable procedures, such as salting databases, to determine how Consultants and Subcontractors use Confidential Information obtained through performance of this Contract.

Violation of this section by Consultant or its Subcontractors may result in termination of this Contract, monetary damages, or penalties.

14. RIGHT OF INSPECTION -- The Consultant shall provide right of access to its facilities to the COMMISSION, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.
15. SITE SECURITY -- While on State of Washington property, including Washington State Department of Transportation (WSDOT) and COMMISSION premises, Consultant, its agents, employees, and/or subcontractors shall conform in all respects with physical, fire or other security regulations.
16. AUDIT REQUIREMENT / ACCESS TO DATA -- In compliance with chapter 39.29 RCW, the Consultant shall provide access to data generated under this Contract to the COMMISSION, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This

## **Exhibit E**

### **Sample - Personal Services Contract**

included access to all information that supports the findings, conclusions, and recommendations of the Consultant's reports, including computer models and methodology for those models.

17. **COPYRIGHTS PROVISIONS** -- Unless otherwise provided, all materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the COMMISSION. The COMMISSION shall be considered the author of such materials.

If materials are not considered "works for hire," Consultant hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the COMMISSION effective from the moment of creation of such materials.

Materials mean all items in any format and included, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under this Contract, but that incorporate preexisting materials not produced under this Contract, Consultant hereby grants to the COMMISSION and WSDOT a nonexclusive, royalty-free, irrevocable license in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly displayed when such use is solely for COMMISSION and WSDOT. The Consultant warrants and represents that Consultant has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the COMMISSION. The Consultant shall exert all reasonable effort to advise the COMMISSION, at the time of delivery of data furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The COMMISSION shall receive prompt written notice of each notice or claim of infringement received by the Consultant with respect to any data delivered under this Contract.

18. **REGISTRATION WITH DEPARTMENT OF REVENUE** -- The Consultant shall complete registration with the Washington State Department of Revenue, and be responsible for payment of all taxes due on payments made under this Contract.
19. **LICENSING, ACCREDITATION AND REGISTRATION** -- The Consultant shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract.
20. **INDUSTRIAL INSURANCE COVERAGE** -- The Consultant shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Consultant fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the COMMISSION may collect from the Consultant the full amount payable to the Industrial Insurance accident fund. The COMMISSION may deduct the amount owed by the Consultant to the accident fund from the amount payable to the Consultant by the COMMISSION under this Contract, and transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services.

This provision does not waive any of L&I's rights to collect from the Consultant.

21. **INSURANCE REQUIREMENTS** - Consultant shall, during the term of this Contract, and at its expense acquire and maintain in full force and effect, the insurance described in this section.

## **Exhibit E**

### **Sample - Personal Services Contract**

Consultant shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Consultant shall provide written notice of such to the COMMISSION within ten (10) Business Day of Consultant's receipt of such notice. Failure to buy and maintain the required insurance may, at the COMMISSION's sole option, result in this Contract's termination. Furthermore, within fourteen (14) days of the execution of this Contract, Consultant shall deliver to the COMMISSION certificates of insurance evidencing the acquisition of insurance required by this Contract.

The minimum acceptable limits shall be as indicated below, with no deductible unless otherwise specified, for each of the following categories:

- a) Commercial General Liability (CG 00 01 10 93, ISO or a later version of the same form or equivalent) covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate, written on an "occurrence" policy form not a "claims made" policy form;
- b) Business Automobile Liability (CA 00 01 07 97, ISO) or a later version of the same form or equivalent (covering owned, hired, or non-owned vehicles) the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Consultant's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease, written on an "occurrence" policy form not a "claims made" policy form;
- d) Professional Liability Errors and Omissions, with a deductible not to exceed \$500,000, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate;
- e) Crime Coverage with a deductible not to exceed \$50,000, and coverage of not less than \$250,000 single limit per occurrence which shall, at a minimum, cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Theft;
- f) Copyright Infringement of title, slogan, trademark, trade name, trade dress, and service mark violation coverage arising from the rendering of the professional services under the Contract, in the amount of \$1 million per occurrence, with the COMMISSION as the Insured or an Additional Insured, to protect the COMMISSION from claims arising from the work, and the products developed and/or used in connection with this Contract, and
- g) Umbrella policy providing excess limits over the Commercial General Liability, Business Automobile Liability, and Employers Liability referenced above in an amount not less than \$3 million.

**The Professional Liability Coverage required by this section must include coverage for claims for injury and/or damage of any type or nature arising from the Consultants rendering of professional services including potential claims of both third parties and the COMMISSION. Coverage must include but not be limited to claims for loss of use and/or damage to the State of Washington property including Washington State Department of Transportation and COMMISSION property due to the incorporation of the Consultant's products and/or work.**

## **Exhibit E**

### **Sample - Personal Services Contract**

For Professional Liability Errors and Omissions coverage and Crime Coverage, Consultant shall: (i) continue such coverage for six (6) years beyond the expiration or termination of this Contract, and providing the COMMISSION with certificates of insurance on an annual basis;

Such insurance policies or related Certificates of Insurance (Certificates) shall name the COMMISSION as an Additional Insured on all general liability, automobile liability, and umbrella policies. Such policies or related Certificates shall also reference this Contract number **AD0000X** and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after written notice of intended revocation thereof shall have been given to the COMMISSION by the Consultants Insurance Broker. Under no circumstances will the COMMISSION be liable for any policy premiums or deductibles.

All insurance provided by Consultant shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

Consultant shall furnish to the COMMISSION copies of certificates of all required insurance within fourteen (14) calendar days of this Contract's Effective Date and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section.

By requiring insurance herein, the COMMISSION does not represent that coverage and limits will be adequate to protect Consultant, nor limit the COMMISSION's right to seek additional recovery from the Consultant. Such coverage and limits shall not limit Consultant's liability under the indemnities and reimbursements granted to the COMMISSION in this Contract.

Failure to comply with the insurance coverages in this section may result in the COMMISSION withholding progress payments until such time the Consultant has fully complied with this section or the COMMISSION may take such action as is available to it under the provisions of this Contract including but not limited to Contract termination. Nothing in these instructions shall relieve the Consultant from complying with other laws or regulations as may apply.

22. **ADVANCE PAYMENTS PROHIBITED** -- No payments in advance, in anticipation of goods or services are to be provided under this Contract, shall be made by the COMMISSION.
23. **PUBLICITY** -- The Consultant agrees to submit to the COMMISSION all advertising and publicity matters relating to this Contract, which in the COMMISSION's judgment, the COMMISSION's name can be implied or is specifically mentioned. The Consultant agrees not to publish or use such advertising and publicity matters without the prior written consent of the COMMISSION.
24. **LIMITATION OF AUTHORITY** -- Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Agent.
25. **WAIVER** -- Any waiver shall not be construed to be a modification of terms of this Contract, unless stated to be such in writing and signed by an authorized representative of the COMMISSION.

## **Exhibit E**

### **Sample - Personal Services Contract**

26. ALTERATIONS & AMENDMENTS – The COMMISSION may, at any time, by written notification to the Consultant and without notice to any known guarantor or surety, make changes in the general scope of the services to be performed under this Contract. If any such changes cause an increase or decrease in the cost of, or the time required for the performance of this Contract, an equitable adjustment may be made in the Contract price or period of performance, or both, and this Contract shall be modified in writing accordingly. Any claim by the Consultant for adjustment under this clause must be asserted within thirty (30) days from the date of Consultant's receipt of the notice of such change; Provided, however, that the COMMISSION may, upon determining that the facts justify such action, receive and act upon such claim asserted at any time prior to final payment under this Contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes." However, nothing in this clause shall excuse the Consultant from proceeding with this Contract as changed.

If the change was caused by the Consultant's failure to perform any aspect of the Contract, the COMMISSION shall not be responsible for any additional costs or delays attributable to the change in work.

27. DISPUTES -- Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved, either party may request a dispute hearing with the COMMISSION.

The request for a dispute hearing must be in writing; state the disputed issues; state the relative positions of the parties; state the Consultant's name, address, and Contract number; and be mailed to the COMMISSION and both parties Contract Manager within three (3) working days after the parties agree that they cannot resolve the dispute.

The other party shall send a written answer to the statement to the other parties involved within five (5) working days.

The COMMISSION shall review the written statements and reply to the parties involved within ten (10) working days. The COMMISSION may extend this period if necessary by notifying the parties.

The parties may agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

28. TERMINATION FOR DEFAULT

In the event the COMMISSION determines the Consultant has failed to comply with the conditions of this Contract in a timely manner, the COMMISSION has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, the COMMISSION shall notify the Consultant in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Contract may be terminated or suspended.

In the event of termination or suspension, the Consultant shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising charges and staff time.

## **Exhibit E**

### **Sample - Personal Services Contract**

The COMMISSION reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Consultant from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Consultant or a decision by the COMMISSION to terminate the Contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Consultant: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the COMMISSION provided in this Contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

29. TERMINATION FOR CONVENIENCE — When it is in the best interest of the COMMISSION, the COMMISSION may terminate this Contract for convenience, in whole or in part, by ten (10) calendar day's written notice to the Consultant. No claim for damages of any kind or loss of anticipated profits on deleted or terminated work will be allowed because of the termination or change order deleting work. The COMMISSION may also terminate the Contract under this section if its authority to perform any of its duties are withdrawn, reduced or limited in any way after the commencement of this Contract and prior to normal completion and/or in event that the COMMISSION's funding to compensate the Consultant is withdrawn, reduced or limited in any way.

If this Contract is so terminated, the COMMISSION shall be liable for services rendered through the effective date of termination, including those direct costs necessarily and actually incurred by the Consultant in anticipation of performing the work that has been deleted or terminated.

30. TERMINATION PROCEDURES — In addition to the procedures set forth below, if the COMMISSION terminates this Contract in whole or in part, the Consultant shall follow any procedures the COMMISSION specifies in the COMMISSION's Notice of Termination. Upon termination of this Contract, the COMMISSION, in addition to any other rights provided in this Contract, may require the Consultant to deliver to the Commission any property specifically produced or required for the performance of such part of the Contract as has been terminated.

The section titled Treatment of Assets shall apply in such property transfer. Unless otherwise provided herein, the COMMISSION shall pay to the Consultant the agreed upon price for completed work and services accepted by the COMMISSION and the amount agreed upon by the Consultant and the COMMISSION for (1) completed work and services for which no separate price is stated, (2) partially completed work and services, (3) other property or services which are accepted by the COMMISSION, if any, and (4) the protection and preservation of property, unless the termination is for default, in which case the COMMISSION shall determine the extent of the liability of the COMMISSION, if any. Provided; that in no event shall the COMMISSION pay to the Consultant an amount greater than Consultant would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Contract. The COMMISSION may withhold from any amount due the Consultant such sum as the COMMISSION determines to be necessary to protect the COMMISSION against potential loss or liability.

31. GOVERNING LAW -- This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## **Exhibit E**

### **Sample - Personal Services Contract**

The Consultant agrees to accept service of process within the state of Washington at any office maintained therein. If such offices are not maintained, the Consultant designates the Secretary of State as an agent for the purpose of service of process.

32. SEVERABILITY -- The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Contract.